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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,248	12/01/2003	Sharon Ann Norton	P145	1932

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EXAMINER

CLARK, AMY LYNN

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/725,248

Applicant(s)

NORTON ET AL.

Examiner

Amy L. Clark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 24-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/21/04, 8/10/05, 5/18/05</u>   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Claims 1-23 and Applicant's election of beet pulp as the fermentable fiber in the reply filed on December 13, 2005 is acknowledged. The traversal is on the grounds that there is no serious burden placed on the Examiner to consider all claims. Applicant further states that under MPEP § 803, election/restriction is proper when both of the following criteria are met: (1) The inventions must be independent or distinct as claimed; and (2) There must be a serious burden on the Examiner if the resection is not required. Applicant further states that the aforementioned methods, kits and compositions are so closely related that it would not present an undue burden on the Examiner to examine the art. Additionally, Applicant states that a prior art search set up for a specific fermentable fiber will be coextensive with any search for any of the disclosed and claimed fermentable fibers of the present invention and, therefore, examination of the present application, as a single unrestricted application, would not be unduly burdensome on the Examiner because a thorough art search of all of the identified classes and subclasses could easily be performed in a single application. Applicant further states that for these reasons, Applicant submits that the restriction requirement applied to the above identified application is improper and be withdrawn.

However, this is not found persuasive for the reasons set forth in the previous Office action and for the reasons set forth below: The invention of Group I, Claims 1-23,

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is drawn to a composition comprising at least about 0.25% of total fermentable fiber, by weight of the composition, classified in class 536, subclasses 1.11 or class 424, subclass 725, the invention of Group II, Claims 24-36, is drawn to a kit comprising a fermentable fiber, classified in class 536, subclasses 1.11 or class 435, subclass 810 and the invention of Group II, Claims 37-53, is drawn to a method selected from the group consisting of enhancing gastrointestinal health of a companion animal, improving the fecal odor of the feces of a companion animal, reducing the risk of cancer in a companion animal, and combinations thereof, comprising orally administering to the companion animal the composition according to Claim 1, classified in class 536, subclasses 1.11 or class 514, subclass 885 or class 424, subclass 76.1 or 76.6. In the instant case, the process for using the invention of Group I does not require a kit; and, each invention is deemed patentably distinct one from the other. Moreover, the process as claimed can be practiced with a materially different product. Invention II, the kit itself, contains components other than the fiber and therefore a separate search for the other components of the kit would be required. Therefore, a search for the kit would not be coextensive with the search for Invention I. Invention III is drawn to different methods of use. For example, fermentable fibers can be used to increase food bulk. Inventions II and III are unrelated. Invention II is directed to a kit comprising a fermentable fiber. Invention III is directed to a method selected from the group consisting of enhancing gastrointestinal health of a companion animal, improving the fecal odor of the feces of a companion animal, reducing the risk of cancer in a companion animal, and combinations thereof, comprising orally administering to the companion animal the

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composition according to Claim 1. The two separate and distinct inventions have different functional effects. A different search would be required for each group and neither would render the other obvious. Finally, because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. The Office has determined that the search for one fiber is not coextensive with any other claimed fiber because the fibers are chemically, structurally and physically distinct. Thus, it would be an undue burden to examine all of the above inventions in one application.

The requirement is still deemed proper and is therefore made **FINAL**.

Claims 13 and 24-53 are withdrawn, with traverse, from consideration pursuant to 37 CFR 1.142(b), as being drawn to non-elected inventions.

Currently, Claims 1-12 and 14-23 are under examination.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-23, the phrase "at least about" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-9, 14, 15 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Farang et al. (A), as evidenced by <http://en.wikipedia.org/wiki/Food> (U), [http://web.archive.org/web/\\*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705](http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705) (V) and <http://dictionary.reference.com/search?q=companion&r=66> (W).

Applicant claims a composition comprising at least about 0.25% of total fermentable fiber, consisting of beet pulp, by weight of the composition, wherein the composition is a liquid, which is further claimed as a gravy, which is adapted for use by a companion animal. Applicant further claims a composition comprising at least about

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0.5% of total fermentable fiber, by weight of the composition. Applicant further claims the composition comprising one or more nutrients.

Farang teaches a stable, bland, free flowing food supplement (please note that food is defined as any substance that can be consumed, including liquid drinks and that food is the main source of energy and of nutrition for animals, as taught by <http://en.wikipedia.org/wiki/Food>) comprising sugar beet pulp, which has a chemical composition of about 4-8% by weight water, 7-9% crude protein, which reads on a nutrient, about 15-25% crude fiber (please note that the fiber in beet pulp is insoluble and moderately fermentable, as taught by [http://web.archive.org/web/\\*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705](http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705), on page 1, paragraph 3, found in the section entitled "The benefits of beet pulp"), which anticipates the range, about 60-70% nitrogen-free extracts and about 2.5-5% ash (See column 4, claim 9). Farang further teaches that the food supplement is usable in gravies, soups, sauces, dips and batters as well as in imitation fruit drinks (See column 1, lines 54-62 and column 3, lines 38-49). Farang further teaches a composition comprising at least 0.25% fermentable fiber. Please note that human beings are "companion animals", since humans are defined to be mammals, which is synonymous with animal and companion is defined as "a person who accompanies or associates with another" (See <http://dictionary.reference.com/search?q=companion&r=66>).

Therefore, the reference anticipates the claimed subject matter.

Claims 1-5 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki et al. (B), as evidenced by <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861689414> (X).

Applicant claims a composition comprising at least about 0.25% of total fermentable fiber, consisting of beet pulp, by weight of the composition, wherein the composition is a liquid, which is adapted for use by a companion animal. Applicant further claims a composition comprising at least about 0.5% of total fermentable fiber, by weight of the composition. Applicant further claims the composition comprising one or more nutrients. Applicant further claims the composition comprising from about 0.1%-20% of total fermentable fiber.

Suzuki teaches an agent for preventing, inhibiting or treating hypertension, comprising two distinct components, which by definition is a composition (See abstract). Suzuki further teaches these components are a compound selected from the group consisting of caffeic acid, chlorogenic acid and ferulic acid, and esters and pharmaceutically acceptable salts thereof and a component selected from the group consisting of central nervous system stimulating components, food fibers, extracts of perennial evergreen leaves, etc (See abstract). Suzuki further teaches that the food fibers in the composition include beet fibers obtained from beet pulp (See paragraph 0026) in a proportion of 0.001 to 1% (See paragraph 0025). Suzuki further teaches that when food fiber is used, the composition is in the form of a drink or a food (See paragraph 0029) and that when the food fiber is used, it is contained in a proportion of



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0.1-20% (See paragraph 0030). Suzuki further teaches the drink comprising of the composition contains 82.1-83.6% water (paragraph 0085 and "Table 11"), which is suitable for drinking (please note that drinking water is defined as water intended for people to drink, as taught by

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861689414>), since Suzuki further teaches that the drink containing the composition and 82.1-83.6% water were given to humans (See paragraph 0087).

Therefore, the reference anticipates the claimed subject matter.

Claims 1, 2, 4-12, 14, 15 and 18-23 are rejected under 35 U.S.C. 102(a) as being anticipated over Cheuk et al. (C).

Applicant claims a composition comprising at least about 0.25% of total fermentable fiber, consisting of beet pulp, by weight of the composition, wherein the composition is a liquid, which is further claimed as gravy, which is adapted for use by a companion animal. Applicant further claims a composition comprising at least about 0.5% of total fermentable fiber, by weight of the composition. Applicant further claims the composition further comprising at least about 0.5% protein and at least about 1% fat, by weight of the composition. Applicant further claims the composition comprising one or more nutrients. Applicant further claims a composition comprising from about 0.1% to about 20% of total fermentable fiber.

Cheuk teaches a canine pet food composition comprising meat, which Cheuk teaches contains 15-25% protein (See paragraph 0037) and 5-15% fat (See paragraph

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0037), beet pulp (which inherently contains insoluble fiber), in an amount of about 8 wt%-16 wt% (See paragraph 0047), and vitamins and minerals (See paragraph 0040) in the form of a chunk and gravy composition (See paragraph 0051 and Claim 4). Cheuk further teaches that a grain, which may be beet pulp, as taught by Cheuk (See paragraph 0040), is mixed with water to achieve hydration and gelatinization of the grain. Cheuk further teaches mixing the gravy that ensues (please note that gravy is a thickened sauce, which may be gelatinous) with meat that has been heated to a temperature at or below the denaturation point of the meat portion (please note that gravy can be further defined to include juices and extractives of meat during cooking to form a thickened sauce) (See Claim 4). Cheuk does not expressly teach a composition comprising from about 0.1% to about 20% of total fermentable fiber, however Cheuk teaches an amount of fermentable fiber which falls within the range claimed by Applicant, therefore, Cheuk anticipates the claimed subject matter.

Therefore, the reference anticipates the claimed subject matter.

\* Applicant is advised that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. Should you receive inquiries about the use of the Office's PAIR system, applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amy L. Clark  
AU 1655

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January 6, 2006

  
TERRY MCKELVEY  
Supervisory Patent Examiner